

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition

:

of

:

**TONIN SANCHEZ**

:

SMALL CLAIMS  
DETERMINATION  
DTA NO. 820220

for Refund of New York State and New York City Personal :  
Income Tax under Article 22 of the Tax Law and the New  
York City Administrative Code the Year 2002. :

---

Petitioner, Tonin Sanchez, 2476 Webb Avenue, Apt. 6B, Bronx, New York 10468, filed a petition for refund of New York State and New York City personal income tax under Article 22 of the Tax Law and the New York City Administrative Code for the year 2002.

A hearing was held before Joseph W. Pinto, Jr., Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on August 4, 2005 at 10:00 A.M. Since no briefs were filed, the hearing date began the three-month period for the issuance of this determination. Petitioner appeared by Anibal Munoz. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Mac Wyszomirski).

***ISSUE***

Whether the Division of Taxation properly disallowed petitioner's earned income credit for 2002 on the grounds that he failed to substantiate the earned income he reported receiving in 2002 and he failed to submit adequate documentation concerning his qualifying dependents.

***FINDINGS OF FACT***

1. Petitioner, Tonin Sanchez, was a self-employed, licensed taxi driver, operating a taxi cab in the Bronx and other boroughs of New York City during the year 2002. Petitioner paid all his own expenses, including licenses, insurance, gas, maintenance and repairs.

2. Petitioner was affiliated with Bailey Radio Dispatcher, to which he paid \$45.00 weekly for radio services. Pursuant to his contract with Bailey, petitioner was prohibited from picking up passengers on the street and using a meter.

3. During the year 2002, Bailey estimated that petitioner made approximately 1,100 trips to different locations within the City of New York. However, Bailey kept no record of the fares collected by petitioner in 2002, and petitioner maintained no records to reflect his earnings, which he did keep for subsequent years.

4. During 2002, petitioner had joint legal custody of his two daughters, Ashley and Francesca, who spent weekends, vacations and sick days with him at his home at 558 West 151<sup>st</sup> Street, Bronx, New York. Petitioner rented a room from his sister at that address for \$50.00 per week. Petitioner kept a contemporaneous diary during 2002, which purported to account for 188 days when his children resided with him.

5. The daughters lived permanently with their mother, Madelyn Sanchez, at 2476 Webb Avenue, Bronx, New York during all other times in 2002. Other than petitioner's testimony and diary, nothing in the record indicated that the children lived or claimed to live at petitioner's address at 558 West 151<sup>st</sup> Street.

6. Following receipt of petitioner's 2002 New York State income tax return, by letter dated March 7, 2003, the Division of Taxation ("the Division") notified him that his return had been selected for review in order to "protect the integrity" of the claimed earned income tax

credit. The letter requested substantiation of petitioner's business income, information on each child, petitioner's address and the name of petitioner's paid tax return preparer.

7. Petitioner's return claimed a New York State earned income tax credit of \$1,139.00 and a New York City STAR credit of \$63.00. In addition, petitioner claimed an earned income credit on his Federal return in the sum of \$4,140.00.

8. Petitioner responded to the request by letter, dated March 25, 2003, and attached copies of various documents in support of the credit, but conceded that he did not keep receipts or documentation of his income and could not verify same. In fact, the gross receipts claimed by petitioner on his Federal and New York State income tax returns for 2002, \$17,950.00, was estimated without any records by petitioner's paid preparer, American and Caribbean Travel, 4963 Broadway, New York, New York.

9. Petitioner submitted detailed records of his receipts for the year 2003, demonstrating that he had changed his business practice.

10. On July 8, 2003, the Division issued to petitioner a Statement of Tax Refund, in which it allowed the New York City STAR credit only, and disallowed the earned income tax credit in its entirety. Petitioner's refund application was timely filed thereafter.

### ***CONCLUSIONS OF LAW***

A. As applicable to this proceeding, Tax Law § 606(d) provides that the New York State earned income credit for the 2002 tax year is equal to twenty seven and one-half percent "of the earned income credit allowed under section thirty-two of the internal revenue code for the same taxable year. . . ." Since the State earned income credit is determined based solely on a percentage of the Federal credit, it is appropriate to refer to the provisions of the Internal

Revenue Code (“IRC”) and interpretations thereof to determine petitioner’s eligibility for the New York earned income credit.

B. The Federal earned income credit, provided for in IRC § 32, is a refundable tax credit for eligible low-income workers. The credit is computed based on the application of a credit percentage to a taxpayer’s “earned income” which includes wage income and earnings from self-employment (IRC § 32[c][2]). The first and only issue to be addressed herein is whether petitioner has sustained his burden of proof (Tax Law § 689[e]) to show that he received \$17,950.00 of earned income from his taxi business during the 2002 tax year.

C. Petitioner established that he was a self-employed taxi driver affiliated with Bailey Radio dispatcher in 2002. He demonstrated that he had the proper licenses to operate a taxi cab and incurred ordinary and necessary expenses associated with the business. However, he conceded in his letter to the Division, dated March 25, 2003, that he kept no records or receipts of his income in 2002 and that the amount of gross receipts set forth on his Federal and New York income tax returns was fabricated by his tax return preparer, American and Caribbean Travel.

D. Petitioner’s record-keeping failure and subsequent inability to prove the amount of income he received in 2002 justified the Division’s denial of his refund request. Earned income is the essential element in the calculation of the credit and a failure to accurately establish that sum is fatal to petitioner’s claim.

E. Since this matter has been decided on the basis of petitioner’s failure to establish earned income for 2002, it is not necessary to address the issue of whether petitioner’s children resided with him for more than one-half of 2002. (IRC § 32[c][3][ii].)

F. The petition of Tonin Sanchez is denied and the Division of Taxation's denial of petitioner's refund application is sustained.

DATED: Troy, New York  
September 15, 2005

/s/ Joseph W. Pinto, Jr.  
ADMINISTRATIVE LAW JUDGE